

## **REMARKS**

Applicants have received and reviewed an Office Action dated December 21, 2006. By way of response, Applicant has amended claims 35-51. The amendments to claim 35 are supported in the Published application at paragraphs [0009-0010] as well as in the original claims. Claims 36-51 are amended to provide proper dependent form. Claim 38 is further amended for clarity. Claims 47-49 are further amended to proper dependent form by depending from claims with the elements recited. No new matter has been inserted. Claims 35-51 are pending. Applicants submit that the pending claims are supported by the specification and contain no new matter.

For the reasons given below, Applicants submit that the amended claims are in condition for allowance and notification to that effect is earnestly solicited.

### **Objection to the Abstract**

The Abstract is objected to for being too short. Applicants have amended the Abstract to more completely describe the invention. Applicants respectfully request that the objection be removed.

### **Rejections under 35 U.S.C. § 112, second paragraph**

Claim 35 is rejected due to unclear recitation of the claimed invention. Applicants have amended claim 35 to clearly recite the spatial arrangement of layers.

Claim 38 is rejected. Applicants have amended claim 38 to clearly set forth the subject matter of the claim as the food item of claim 35 wherein the item is baked.

Claims 39-51 are rejected as not properly depending from claim 35. Applicants have amended claims 39-51 to reflect dependence from the subject matter of claim 35, which is a comestible food item.

Accordingly, Applicants respectfully submit that the amended claims fully comply with 35 U.S.C. § 112, first paragraph and withdrawal of this rejection is respectfully requested.

### **Rejections under 3 U.S.C. § 103(a)**

Claims 35-46, 48, and 50-51 are rejected under 35 U.S.C. § 103(a) as unpatentable over Van der Graaf et al. (U.S. Patent No. 5,405,626). Applicants respectfully traverse the rejection.

In applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making a modification or combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

*Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

Van der Graaf et al. disclose a puff pastry with (e.g.) a fruit filling in a composite layered construction. The layered construction is a puff pastry layer and an anchoring layer for a moisture barrier coating. The anchoring layer, typically a shortbread or other dough layer and the moisture barrier are intended to protect the puff pastry from moisture from the filling (e.g. apple filling) when stored at ambient or chilled temperatures. Van der Graaf et al. disclose puff pastry with a layer of dough, which is intended to be an anchoring layer (col. 1, lines 54-57) which is baked prior to the addition of an edible fatty/waxy protective layer having moisture barrier properties (col. 2, lines 6-9). A filling is then disposed on top of the moisture barrier layer. Thus, the layers (see Fig. 3), of Van der Graaf et al. are, in order:

Filling  
Fatty/waxy moisture barrier layer  
Anchoring layer for moisture barrier layer (pre-baked)  
Unleavened puff pastry– to provide bready texture(pre-baked)

In contrast, Applicants' invention is an unleavened dough exterior, an inner layer of a standard leavened dough, and a filling disposed on top of the inner leavened dough layer. Thus, the layers of Applicants' invention are, in order:

Filling  
Bready leavened dough – to provide bready texture

## Crispy unleavened dough

In summary the claimed material differs from the prior art in that:

- (1) The anchor layer is different in character and dimension than than the claimed dough layer
- (2) The puff pastry dough is different than the Crispy unleavened dough in character; and
- (3) The puff pastry layer is of different dimensions and proportions than the claimed layer.

The anchor can be made of a variety of materials but is used only to act as a place to locate that waxy moisture barrier layer. The specification (col. 3, lines 1-15 and Fig. 2) shows a unique puff pastry very different than the bready materials claimed. The structure in Fig 2 would be unsuitable for the uses disclosed in the application.

The baked finished product of Van der Graaf et al. is a puff pastry with a anchor layer, moisture barrier and a filling. Puff pastry dough is prepared as a thick laminate with multiple layers of fat and dough. When baked, puff pastry obtains a multilayered puffed character. Puff pastry has a very high fat content and, due to the fat and multiple laminations, is known to substantially blister and become uneven, multilayered, light and flaky during the baking process. For this reason, puff pastry is a unique baked material unlike other typical leavened and unleavened materials and is not used in the applications disclosed in the invention. See paragraph [0008] of the published application. See also the attached **Wikipedia** document that shows a puff pastry layer is a unique material unlike conventional dough.

Puff pastry is employed where the light flakey texture is needed and flatness is not required. In contrast, the standard leavened dough with the crispy outer layer of Applicant's invention is suitable for applications where a substantially flat finished baked product is desirable, such as in pizza crust. The nature of the "crispy" layer is defined in the published application at page 3, paragraph [0014], which states that:

**[0014]** For the purpose of this patent application, the term "crisp" indicates a dough that has a crust characteristic such that the dough, when measured for penetration using a Texture analyzer machine, has a rapidly rising force curve, measured by the high slope of the curve, reaches a failure plateau quickly and

fails rapidly to a level that indicates a tender bready interior. For comparison, a steeper slope to the curve shows increased crispness.

This definition indicates that the "crispy" layer has a single layer since it provides a single barrier to the probe used by the Texture analyzer machine. This is consistent with the concept of the invention to add a thin crispy outer layer to a bready inner layer that is in contact with a filling such as in a pizza. In such a structure, the outer crispy layer remains crispy since it is separated from the filling by the bready layer and other optional layers. Van der Graaf et al. teach a puff pastry layer that is not considered to be conventional unleavened dough. Further, the Van der Graaf puff layer, if measured by the texture analyzer, would show multiple layers not just one as required. Further, the puff layer of Van der Graaf et al. has multiple layers of a weak flaky character unlike the single crisp layer of the claimed invention.

Further, the dimensions of both the unleavened layer and the dough layer of the invention are substantially different than the puff layer and anchor layer of Van der Graaf et al. The dimensions of the Van der Graaf et al. layers are shown in the figures and at Example 1 at Col. 2, line 42 to Col. 3, line 2. In these portions, the puff layer is described as much thicker (11 mm) than the other layer (4 mm). In sharp contrast, the claimed invention uses a crispy layer (less than 0.9 mm) and is thinner than the bready layer (greater than 1 mm). This is also made plain in the ratio of claim 42.

Taken as a whole, the disclosure of Van der Graaf et al. does not suggest the desirability of making the combination of Applicants' invention. Applicants cannot and do not employ puff pastry, as puff pastry is generally unsuitable for applications such as pizza crust, pocket sandwiches and other disclosed uses of the invention. See paragraph [0008] of the published application. Applicant's uses require substantial flatness and a robust crust not seen in the puff materials. It is important to note that the Van der Graff et al. materials are disclosed as a crust for a pie and is used by placing the anchor layer in contact with the filling. The mechanical stability of the layers are obtained from the pie and is not robust in itself.

Van der Graaf et al. further teach away from Applicants' invention by using a thin layer between the puff layer and the filling. This layer is not like the bready layer as claimed. Van der Graaf further teaches away from Applicants' invention by disposing the tender puff pastry layer as the outside layer in the layered construction. The puff pastry layer is thus not a substitute for

the bready layer in direct contact with the filling; indeed, the object of Van der Graaf is to prevent any contact between the puff pastry layer and the filling. Again, by requiring this construction in order to reach an acceptable result, Van der Graaf et al. teach that to provide the bready layer in contact with the filling is to fail to provide desirable texture in the resulting dough. Applicants' invention is a crispy layer with a tender layer disposed as the inside layer in touching relation to the filling. Van der Graaff et al. fail to teach the important parameters of the invention. The thicknesses and the moisture contents recited in the claims are not disclosed in their entirety as required by 35 U.S.C. § 103(a).

Further, puff pastry is not a food that can be cooked from the raw state in a microwave oven. The puff pastry of Van der Graaf et al. would not work if cooked in a microwave oven from the raw dough. Thus, Van der Graaf et al. specify that the composite dough must be either par-baked or fully baked (col. 2, lines 20-21 and claim 1) before toppings or fillings can be added. Van der Graaf et al. further specify that “[a]fter baking, the composite layer of baked product according to the present invention is provided with an edible protective layer having moisture barrier properties...” (col. 2, lines 6-9). Thus, baking the composite layers is required to provide a desirably edible product having a moisture barrier layer. All the claims in Van der Graaf et al. are drawn to baked composites of puff pastry, wherein filling is provided after baking.

In contrast, the dough of Applicants' invention may be used in a raw state, where toppings are added to the uncooked dough, and a moisture barrier is effectively provided when the food item is later cooked. Thus, claim 35 is drawn to the food item that is suitable for baking with the filling portion in contact with the second dough layer, as set forth in 35(b). Such an arrangement, if employed with the puff pastry of Van der Graaf, would be inoperable.

“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

The ability to provide a completely uncooked food product wherein the layers, as assembled to include toppings or fillings, can later be cooked all at once to provide a crispy outer crust, a tender inner crust, and a filling that is desirably edible is a unique aspect of Applicants'

invention. There can be no reasonable expectation of success in providing an uncooked composite dough according to Van der Graaf et al. and adding toppings, then cooking the entire composite.

For the foregoing reasons, Applicants assert that claim 35 is allowable over Van der Graaf et al. Claims 36-51 depend from claim 35. Therefore, claims 36-51 are also allowable. Applicants respectfully request that the rejection be withdrawn.

Claims 47 and 49 are rejected as unpatentable over Van der Graaf et al. in light of Baumann et al. (U.S. Patent No. 6,267,998). Applicants respectfully traverse the rejection. Baumann et al. does not supply the elements of Applicants' invention that are missing from Van der Graaf et al. There is no teaching or suggestion to provide composite dough that, together with a topping, can be cooked from a raw to a fully cooked state to provide a crispy outer dough, tender inner dough, and filling. Baumann et al. supply only the element of an edible adhesive placed between the layers of the composite dough.

If the teachings of Van der Graaf et al. and Baumann et al. were combined, the result would not be Applicants' invention. Rather, the result would be a puff pastry layer, adhered to a second dough layer by the adhesive of Baumann et al. The layers would still have to be at least par-baked before toppings were added in order to provide a suitably edible final product after heating. Thus, the combination of Van der Graaf et al. and Baumann et al. do not render Applicants' invention as claimed in claim 35 obvious, nor does it render dependent claims 47 and 49 obvious by virtue of the inclusion of an adhesive layer.

The teachings of Andersen et al. and Ross et al. are similarly devoid of any teaching that would render Applicants' invention obvious. Applicants respectfully request that the rejection be withdrawn.

In view of the above amendments and remarks, Applicants respectfully request a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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Date

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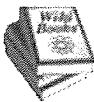
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# Puff pastry

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In baking, a **puff pastry** (*pâte feuilletée*) is a light, flaky pastry made from dough of the same name. The dough, which is also called *puff paste*, contains several layers of butter. Commercially made puff pastry is available in the freezer section of most grocery stores or supermarkets.

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Apple turnover, made with puff pastry

## Notes on baking and storing puff pastry

Puff pastry is cooked when the bottom of the item is browned and the pastry does not collapse into itself.

- Use a very sharp knife to cut puff pastry. A blunt knife will crush the layers together and prevent the pastry from rising to full height.
- Do not get egg wash or milk wash on the sides of the pastry. This will glue the layers together during baking and result in uneven lift.
- Excess flour left on the item will burn easily in the oven. Dust it off with a soft pastry brush.
- Always use a cold sheet tray to bake puff pastry on. This will help keep the butter from melting and your baked goods from becoming greasy.

- Always chill puff pastry before baking.
- Always bake puff pastry in a very hot oven (220 °C/425 °F). A hot oven ensures the moisture in the dough turns into steam, which is what makes puff pastry expand. (Puff pastry generally bakes well at 400 degrees and you can scrape by at 375 but any lower and you risk your butter melting and making your goods greasy. This will also happen if your oven is too hot.)
- Open the oven flue during baking to allow steam to escape and the pastry to dry, or failing that, open the oven door near the end of the baking.
- Puff pastry can be refrigerated for a week, or frozen for three months. Stored puff pastry will have less lift than fresh pastry.

## Method 1

### Ingredients

- 1 (one) pound of flour
- 1 (one) pound of butter
- water

### Directions

1. Sift the flour.
2. Divide the butter into four parts.
3. Cut one part of the butter into the flour with a knife.
4. Make the butter and flour into dough with water.
5. Roll the dough.
6. Flake the dough with part of the butter.
7. Flake until all the butter is in.
8. You have made enough crust for at least ten puffs.
9. Bake with a quick heat for 10 (ten) to 15 (fifteen) minutes.

## Method 2

### Ingredients

- 2 (two) dry quarts ( $\frac{1}{4}$  peck, 2.2 liters) of flour
- 1 (one) pound of butter
- cold water

Take a quarter of peck of flour, and rub it into a pound of butter very fine. Make it up into a light paste with cold water just stiff enough to work it up. Then lay it out about as thick as a silver dollar; put a layer of butter all over, then sprinkle on a little flour, double it up, and roll it out again. Double and roll it with layers of butter three times, and it will be fit for use.

## Classic Puff Pastry

### Ingredients

- 2.5 lbs (40 oz) Bread Flour (1125g)

- 0.5 oz Salt (15g)
- 1.5 lbs (24 oz) Cold Water (775g)
- 2.5 lbs (40 oz) Room Temp Butter (1125g)
- 4 oz Bread Flour (115g)

## Method

1. Mix the salt in with the larger portion of flour.
2. Add the cold water to the flour and salt and work it into a dough.
3. Knead about 80 times to make a soft dough and build some gluten.
4. Flatten out the dough slightly and refrigerate.
5. Take the room temp butter and mix it with the smaller portion of flour. It should be soft enough to spread. Do not refrigerate.
6. Take the chilled dough and roll it out to about 26" x 18".
7. Leaving a one inch margin, spread the butter mixture evenly over the dough so that it covers  $\frac{2}{3}$  of the dough.
8. Fold the dough into thirds like you were folding a letter. Fold the dough with no butter over about half of the dough with butter, then fold the remaining edge over on top of the piece you just folded. If you did it correctly it should be a layer of dough on the bottom, a layer of butter, another layer of dough, another layer of butter and a final layer of dough. This is called a Tri-Fold.
9. Refrigerate for 20-30 minutes to allow the dough to relax.
10. Roll out the dough to the same size as before, 26" x 18".
11. Fold the dough so that the two short edges meet in the center. Take one of the new short edges and fold it over to meet the other short edge. This is called a Four-Fold or a Book-Fold.
12. Refrigerate the dough again and then roll out and do another book fold. Repeat this step two more times. You now have classical puff dough.

## Notes

1. Always always always salt your dough. It's not enough to be noticeable but it will help bring out the flavors of whatever you use your dough to make.
2. The dough can be refrigerated for about five days, but after that it may start to take on a greyish tint. Toss it.
3. Freezing dough generally isn't a good idea. With this much water and butter in the dough, the ice crystals that form can damage your dough and gluten strands, causing it to rise unevenly and break easily.
4. Do not be afraid to add flour or water to your dough if you find it too sticky or dry. Location and humidity can alter the moisture content in dough.
5. Extra bread flour was added to the butter to help absorb any excess moisture in your dough and product. It will also help prevent a soggy baked good.
6. The flour and butter mixture is called a Beurrage. The dough before the Beurrage is added is called the Detrempe.

## Modernisation: Flaky Puff Pastry

### Ingredients

- 460 g butter, divided into four equal portions
- 460 g plain (non-self-raising) flour

## Method

1. Sift flour into a bowl
2. Cut one portion of butter into the flour till becomes crumbly.
3. Add cold water, as needed, to make a dough.
4. Lightly dust kneading board and rolling pin with flour. Roll dough till it is approximately half a centimetre thick.
5. Cut (smear) another portion of butter into the pastry. Fold pastry into quarters. Roll pastry back to a half a centimetre thickness. Repeat this step till there is no butter left.
6. Draw a sheet of plastic food wrap large enough to cover one side of the flattened pastry. Invert the kneading board.
7. Cover the other side with another sheet of plastic food wrap. Gently roll the pastry into a cylindrical shape.
8. Store in refrigerator until needed for use. Keeps well for a maximum of two days.

## Modernisation: Filo Puff Pastry

### Ingredients

- 2 and  $\frac{1}{3}$  cups plain (non-self-raising) flour
- Additional flour for dusting
- 450 g butter, diced
- 550 g butter
- chilled water

### Method

1. In a bowl, mix the first measure of flour and diced butter, until it becomes a fine crumb.
2. Add to the crumb, a little at a time, ice cold water until it becomes a very stiff dough.
3. Lightly dust the kneading board and rolling pin with flour.
4. Roll the pastry dough to the thickness of parchment paper, or thinner if possible.
5. Coat all of the visible dough with smears of butter. Sprinkle the pastry with a light dusting of flour, then fold in half.

- While coating the dough in butter, keep the rolling pin as cool as possible. Either place a tea towel over the rolling pin, then a cold pack on top, or place the rolling pin in the freezer if near by.

1. Repeat steps #4. and #5. at least another two more times. At most, repeat another six times. Work as quickly and efficiently as possible.
2. Draw a sheet of plastic food wrap large enough to cover one side of the flattened pastry. Invert the kneading board.
3. Cover the other side with another sheet of plastic food wrap. Gently roll the pastry into a cylindrical shape.
4. Store in refrigerator until needed for use. Keeps well for a maximum of one day.

Always make sure that any water used in the dough was ice cold.

## Common recipes featuring puff pastry

Croissants are sometimes formed from puff pastry. Puff pastry shells used to be filled with crabmeat salad or chicken à la king at ladies' luncheons. An American fashion in the late 1970s was to bake a wedge of Brie in puff pastry and serve warm. Choux pastry, used to make profiteroles is different, using eggs. Bourekas is also made out of puff pastry, filled with various ingredients.

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